

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VISA U.S.A. INC.,

Plaintiff,

vs.

MARITZ INC., d/b/a MARITZ
LOYALTY MARKETING,

Defendant.

Case No. CV-07-5585 JSW

**[PROPOSED] ORDER DENYING
DEFENDANT MARITZ INC.'S REQUEST
FOR DISCOVERY**

Date: February 22, 2008
Time: 1:30 p.m.
Dept: Courtroom 2 (17th Floor)
Judge: Hon. Jeffrey S. White

AND RELATED COUNTERCLAIMS.

Now before the Court is the request from Defendant Maritz Inc. d/b/a Maritz Loyalty Marketing ("Defendant") for discovery. Having carefully reviewed the submissions of the Parties, and considered the arguments of counsel, and the relevant legal authority, and good cause appearing, Defendant's motion is hereby DENIED.

Defendant has failed to present any affidavits or other evidence setting forth the particular facts that it reasonably expects to derive from the requested discovery, and which would create a triable issue. *Mackey v. Pioneer Nat'l Bank*, 867 F.2d 520, 523-24 (9th Cir. 1989). The Court therefore denies the request as procedurally insufficient.

1 The Court further finds that Defendant's motion fails on its merits. First, Defendant has
2 failed to show that it has a need for the discovery it seeks. Second, Visa's alleged non disclosure
3 of the nature and amount of its damage claims cannot be actionable absent Defendant's showing
4 that Visa had a duty to disclose. *People v. Highland Fed. Sav. & Loan*, 14 Cal. App. 4th 1692
5 1718-19 (1993); Restatement (2d) of Torts, § 551. Defendant has failed to show, by the
6 allegations of its counterclaim or its declarations submitted in support, any facts that would create
7 a triable issue, under the Restatement or applicable California law, as to whether Plaintiff had a
8 duty to Defendant to disclose the nature and magnitude of its damages. Since Defendant has not
9 shown the requisite element of duty, the Court need not consider whether Defendant would need
10 discovery to establish the remaining elements of its fraudulent inducement claim.

11 Accordingly, the Court Orders as follows:

12 1. Defendant's request for discovery is hereby DENIED.

13 IT IS SO ORDERED.

14
15 DATED: _____

Honorable Jeffrey S. White
UNITED STATES JUDGE FOR THE NORTHERN
DISTRICT OF CALIFORNIA